

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROGER SAUL and
ALMA A. SAUL,

Plaintiffs,

v.

No. 1:24-cv-00362-KK¹

U.S. BANK NATIONAL ASSOCIATION,
NATIONSTAR MORTGAGE LLC and
MTGLQ INVESTORS, L.P.,

Defendants.

MEMORANDUM OPINION AND ORDER TO SHOW CAUSE

Plaintiffs, who are proceeding *pro se*, allege that Defendants “caused the Plaintiffs harm by falsely representing amounts of legal expenses and ‘other charges’ owing for Mortgage Payoffs” and “Plaintiffs relied on Defendants’ representations and were ultimately damaged by the foreclosure loss of three properties.” Complaint for a Civil Case at 2, Doc. 1, filed April 15, 204.

Jurisdiction

As the parties seeking to invoke the jurisdiction of this Court, Plaintiffs bear the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists

¹ The Clerk's Office assigned the undersigned to this case for review pursuant to 28 U.S.C. § 1915 which allows the Court to authorize commencement of a case without prepayment of the filing fee. *See* Doc. 2, filed April 16, 2024. Plaintiffs sent a money order for the filing fee but in an incorrect amount. The Clerk’s Office returned the money order to Plaintiffs notifying them of the correct amount of the filing fee. The undersigned has reviewed the Complaint pursuant to the Court's inherent power to manage its docket. *See Securities and Exchange Comm'n v. Management Solutions, Inc.*, 824 Fed.Appx. 550, 553 (10th Cir. 2020) (“a district court has the inherent power 'to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases'”) (quoting *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891-92 (2016)).

absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988)).

Plaintiffs allege that “jurisdiction in United States District Court is proper” quoting 28 U.S.C. § 144. Complaint at 2. Section 144 provides in relevant part:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

28 U.S.C. § 144. Plaintiffs attached an “Affidavit of Personal Prejudice” regarding two state-court judges. *See* Complaint at 5.

There is no properly alleged federal-question jurisdiction because the Complaint does not allege that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

“For a case to arise under federal law within the meaning of § 1331, the plaintiff’s well-pleaded complaint must establish one of two things: either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law” . . . “The complaint must identify the statutory or constitutional provision under which the claim arises, and allege sufficient facts to show that the case is one arising under federal law.”

Davison v. Grant Thornton LLP, 582 Fed.Appx. 773, 775 (10th Cir. 2014) (quoting *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1023 (10th Cir.2012) and *Martinez v. U.S. Olympic Committee*, 802 F.2d 1275, 1280 (10th Cir. 1986)). Plaintiffs assert the Court has jurisdiction pursuant to 28 U.S.C. § 144. However, 28 U.S.C. § 144 does not provide for a private right of action; it only provides that United States District Judges may not proceed further and another United States

Judge must be assigned if a party files a sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice. 28 U.S.C. § 144 does not apply to state-court judges.

There is no properly alleged diversity jurisdiction because the Complaint indicates that Plaintiffs and all Defendants reside in New Mexico. *See* Complaint at 1-2. To invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties and that the amount in controversy exceeds \$75,000.” *Symes v. Harris*, 472 F.3d 754, 758 (10th Cir.2006). “Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant.” *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013).

It appears the Court should dismiss this case for lack of subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”). The Court orders Plaintiffs to show cause why the Court should not dismiss this case for lack of subject-matter jurisdiction. If Plaintiffs assert the Court should not dismiss this case, Plaintiffs must file an amended complaint.

Fraud

The Complaint appears to assert a claim for fraud because it alleges Defendants harmed Plaintiffs “by falsely representing amounts of legal expenses and ‘other charges’ owing for Mortgage Payoffs,” Plaintiffs relied on those representations, and were damaged by their reliance on those representations. Complaint at 3 (referring to 18 U.S.C. § 1341, Frauds and swindles).

The Complaint fails to state a claim for fraud.

The elements of fraud include (1) a misrepresentation of fact, (2) either knowledge of the falsity of the representation or recklessness on the part of the party making the misrepresentation, (3) intent to deceive and to induce reliance on the misrepresentation, and (4) detrimental reliance on the misrepresentation ... Our case law provides, in the general sense, that a plaintiff alleging fraud may recover “such damages as are the direct and natural consequences” of the reliance on a fraudulent representation.

Williams v. Stewart, 2005-NMCA-061 ¶ 34 137 N.M. 420, 429, 112 P.2d 290, 512. Federal Rule of Civil Procedure 9(b) states: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Rule 9’s purpose is “to afford defendant fair notice of plaintiff’s claims and the factual ground upon which [they] are based....” *United States ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1172 (10th Cir. 2010). “At a minimum, Rule 9(b) requires that a plaintiff set forth the ‘who, what, when, where and how’ of the alleged fraud , ... and must set forth the time [and date], place, and contents of the false representation, the identity of the party making the false statements and the consequences thereof.” *United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726-727 (10th Cir. 2006).

The Complaint does not describe the false representations each Defendant allegedly made, the contents of those false statements, the person making the false statements, those persons knowledge of the falsity of the statements or their recklessness in making those statements, those persons’ intent to deceive and to induce Plaintiffs’ reliance on the statements or the dates they made the false statements.

The Court orders Plaintiffs to show cause why the Court should not dismiss the Complaint for failure to state a claim for fraud. If Plaintiffs assert the Court should not dismiss this case, Plaintiffs must file an amended complaint.

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website: <http://www.nmd.uscourts.gov>.

Compliance with Rule 11

The Court reminds Plaintiffs of their obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiffs to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

IT IS ORDERED that Plaintiffs shall, within 21 days of entry of this Order: (i) show cause why the Court should not dismiss this case; and (ii) file an amended complaint. Failure to timely show cause and file an amended complaint may result in dismissal of this case.

A handwritten signature in black ink, appearing to read "Kirtan Khalsa", is written over a horizontal line.

KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE